# STATE OF MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

#### **Bulletin 2014-3-INS**

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Hospital Indemnity and Fixed Indemnity Policies

Issued and entered this 20 day of February 2014 by Annette E. Flood Director

This bulletin supersedes Bulletin 2013-20-INS.

On November 13, 2013, the Department of Insurance and Financial Services (DIFS) issued Bulletin 2013-20-INS, which addressed subregulatory guidance issued by the federal government concerning fixed indemnity (also known as "hospital indemnity") plans. The federal guidance indicated that plans would no longer be considered "excepted benefits" for purposes of compliance with the Patient Protection and Affordable Care Act (ACA) if they paid benefits on a basis other than per-time-period.

On January 9, 2014, the federal government issued a new FAQ (FAQ #11) that signaled a change in how states should treat individual market fixed indemnity and hospital indemnity plans.<sup>1</sup> This bulletin addresses the impact of FAQ #11.

### Individual Market Fixed Indemnity and Hospital Indemnity Plans

FAQ #11 states that the federal government intended to propose regulatory amendments in order to allow <u>individual market</u> fixed indemnity plans to qualify as excepted benefits even if benefits are paid in a manner other than on a per-time-period basis, so long as the following conditions are met:

- The plan is sold only to individuals who have other health coverage that is minimum essential coverage within the meaning of section 5000A(f) of the Internal Revenue Code;
- 2) There is no coordination between the provisions of benefits and an exclusion of benefits under any other health coverage;
- The benefits are paid in a fixed dollar amount regardless of the amount of expenses incurred and without regard to the amount of benefits provided with respect to an event or service under any other health coverage; and
- 4) A notice is displayed prominently in the plan materials informing policyholders that the coverage does not meet the definition of minimum essential coverage and will not satisfy the individual responsibility requirements of section 5000A of the Internal Revenue Code.

<sup>&</sup>lt;sup>1</sup> See "FAQs about Affordable Care Act Implementation Part XVIII," last accessed on February 18, 2014 at www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca implementation faqs18.html.

Accordingly, DIFS will now consider fixed indemnity and hospital indemnity plans in the individual market only to qualify as excepted benefits if they meet the four above-listed criteria.

#### Group Market Fixed Indemnity and Hospital Indemnity Plans

FAQ #11 addressed only individual market fixed indemnity plans. As a result, group market fixed indemnity and hospital indemnity plans must continue to comply with applicable federal authority. Specifically, pursuant to federal regulations, fixed indemnity or hospital indemnity plans are exempt only if the following conditions are met:

- the benefits are provided under a separate policy, certificate, or contract of insurance;
- there is no coordination between the benefits provided and an exclusion of benefits under any group health plan maintained by the same sponsor; and
- the benefits are paid with respect to an event without regard to whether benefits are provided with respect to the event under any group health plan maintained by the same sponsor.
- the plan pays a fixed dollar amount per day (or other period of time) of hospitalization or illness, regardless of the amount of expenses incurred.

See 45 CFR 146.145 (small and large group markets). According to the regulation, plans paying benefits on a per-visit or per-event basis (e.g., doctors' visits at \$50 per visit, or prescription drugs at \$15 per prescription) do not meet the federal definition of "fixed indemnity" plans and thus are not exempt from the requirements of the ACA. In addition, individuals who are covered under these policies and do not have other comprehensive insurance may be subject to penalty under the ACA for failure to maintain minimum essential coverage.

DIFS, recognizing that issuers will require time to comply with the new federal guidance, will provide a transition period to comply. In order to reduce confusion during and after the transition period, and to protect consumers from inadvertently incurring penalties under the ACA, DIFS requests that issuers of group fixed indemnity policies only notify every individual currently insured under such policies that the policies are not comprehensive major medical coverage and will not satisfy the minimum essential coverage requirement of the ACA. This notice shall be provided at the issuer's earliest opportunity, and shall also be provided with any such policies issued or renewed on or after January 1, 2014.

Any group hospital indemnity policies issued and in force prior to January 1, 2014 may remain in effect at the option of the insured or health insurance issuer. The Department of Insurance and Financial Services will enforce the new definition of fixed indemnity coverage for purposes of compliance with federal law for all hospital indemnity or other fixed indemnity plans issued or renewed on or after January 1, 2014. Group plans that do not meet the federal definition of fixed indemnity plans are not exempt from the requirements of the ACA, including but not limited to the requirement to provide essential health benefits and the prohibition on annual and lifetime limits.

## Any questions regarding this bulletin should be directed to:

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